

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

BRANDON R. DIXON,

Petitioner, : Case No. 3:22-cv-070

- vs -

District Judge Michael J. Newman
Magistrate Judge Michael R. Merz

WARDEN, Chillicothe Correctional
Institution,

:
Respondent.

DECISION AND ORDER ON MOTIONS TO CLARIFY

This habeas corpus case is before the Court on Petitioner's Motion to Clarify (ECF No. 22) the Order in which on July 7, 2022, the Magistrate Judge ordered stricken all documents filed by Petitioner which "were not within the state court record considered by the Ohio courts." (ECF No. 15 at PageID 351). Dixon now asks the Court to clarify which documents are covered by that Order. They are as follows:

1. Petitioner's Affidavit attached to his original Petition and all of the attached exhibits.
2. Motion of Additional Exhibits A-1, A-2, and A-3 (ECF No. 9).
3. Affidavit in Support of Incorporated Transcripts (ECF No. 13).
4. Additional exhibits A-1, A-2 (ECF No. 20).

The reason for the Order is the manner in which the State Court Record must be constructed. Once the Magistrate Judge has determined whether the State should be ordered to answer, it will specify which claims the State must respond to and will order the State to file those

portions of the State Court Record necessary to decide those claims. Once the State has done so, Petitioner may move to expand the record to include additional materials. While Habeas Rule 7 does not limit those materials, Supreme Court precedent does, limiting them to materials considered by the state courts. *Cullen v. Pinholster*, 563 U.S. 170 (2011); *Shinn v. Martinez Ramirez*, 596 U.S. ___, 142 S.Ct. 1718 (2022). Materials considered by the Ohio courts can be added only with prior permission of the Court. That is why the above-referenced filings are stricken without prejudice to their submission with a motion to expand the record under Rule 7.

Petitioner's Motions also seeks guidance on the number of Grounds he may assert in the ordered definite statement. The Habeas Rules place no limit on the number of grounds to be pleaded. The Magistrate Judge would note, however, that Petitioner seems eager for a prompt decision. The practice in habeas cases in this Court is not to decide cases piecemeal, but to render a comprehensive decision.

Finally, Petitioner notes that he

is refiling the Memorandum of support of Exhibits# A-1 and A-2 as being transcripts of proceedings of state court needed to establish asserted claims, they may have been stricken because they are already admitted as DO # 9 in adjudicated record.

ECF No. 22, PageID 438. Petitioner is mistaken: these documents have not been admitted. They are again STRICKEN. To repeat, once the Respondent has filed the State Court Record, Petitioner may move to expand that record. He may not expand it without court permission.

August 15, 2022.

s/ *Michael R. Merz*
United States Magistrate Judge